

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

GILDA M. COKER

Plaintiff,

v.

Christine Todd Whitman, Adm. EPA

Defendant.

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:
:
:
:
:
:

CIVIL ACTION NO. 02-CV-3735

ORDER

AND NOW, this _____ day of _____, **2002**, upon consideration of Plaintiff's Motion to Vacate Order & Request for Extension of Time, it is hereby ORDERED that Plaintiff's Motion is GRANTED. The Honorable Judge's Order dated 12/19/02, dismissing Plaintiff's Complaint is hereby VACATED. Plaintiff has until the _____ day of _____, 20__, to file a response to Defendant's Motion to Dismiss.

BY THE COURT:

J.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

GILDA M. COKER	:	CIVIL ACTION NO. 02-CV-3735
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
Christine Todd Whitman, Adm. EPA	:	
	:	
Defendant.	:	

**PLAINTIFF'S MOTION TO VACATE ORDER AND
FOR EXTENSION OF TIME TO FILE RESPONSE**

AND NOW Plaintiff, by and through her undersigned counsel, respectfully moves this Honorable Court to Vacate the Order entered on December 19, 2002, Dismissing Plaintiff's Complaint. Plaintiff further requests that this Honorable Court grant her an extension of time to respond to Defendants' Motion to Dismiss, pursuant to F.R.Civ.P. 6(b)(2), there being excusable neglect and Defendant not being prejudiced and in the interest of justice.

Respectfully submitted,

DATED:

BY: _____
J. Edward McCain III, Esquire
1800 Callowhill Street
Philadelphia, PA 19130
215-557-0151
Attorney for Plaintiff

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

GILDA M. COKER	:	CIVIL ACTION NO. 02-CV-3735
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
Christine Todd Whitman, Adm. EPA	:	
	:	
Defendant.	:	

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S MOTION TO VACATE
ORDER AND FOR LEAVE TO FILE RESPONSE OUT OF TIME**

STATEMENT OF FACTS

On June 12, 2002, Plaintiff Gilda Coker filed the instant complaint pro se, alleging discrimination on the part of certain employees of the Environmental Protection Agency on the basis of race, age, color and retaliation for filing a previous complaint. According to the U.S. District Court's docket, the Complaint was served on the U.S. Attorney's Office on June 13, 2002. After no response, a second copy was served on the U.S. Attorney's Office on September 3, 2002. Finally, on September 13, 2002, acceptance of Service by the U. S. Attorney's Office was filed with this Honorable Court. Subsequently, Defendant allegedly filed a Motion for Leave to File a Response Out of Time, which this Court granted, giving defendant until October 11, 2002 to file a response. Then, on October 11, 2002, Defendant filed a Motion for Extension of Time to file its response to Plaintiff's Complaint. Again the Court granted defendant's request and by Order dated October 17, 2002, and entered on October 18, 2002, the defendant was given until November 4, 2002, to file a responsive pleading. Finally, on November 26, 2002, Defendant's filed their Motion to Dismiss.

Based on the Honorable Judges Order of October 17, 2002, Defendant's Motion is out of time and contra to that Order. On that basis alone, Defendant's motion should have been denied. (Plaintiff admits to receiving a copy of a second Order from the Court, granting Defendant's Motion for Leave to File its Response Out of Time, also dated October 17, 2002, with September crossed out. This Order was entered that same day, 10/17/02. However, because the Order

permitting defendant until November 4, 2002 to file a response was entered on October 18, 2002, we must assume the later Order is controlling. At any rate it's easy to understand Plaintiff's resulting confusion.) Also, no notice of how much time Plaintiff had to respond was given in defendants' letter accompanying their motion.

Gilda Coker is a seventy-eight year old (DOB: 8/26/24) pro se Plaintiff who works full time for the EPA. When Defendants did not respond within the prescribed time period, she assumed judgment would be entered in her favor. When she did receive defendant's untimely Motion to Dismiss on November 27, 2002, at first she thought there was no need to respond because the motion was out of time. After careful thought, she decided to consult an attorney with regard to whether a response was needed. At that time, she mistakenly believed that she had at least 30 (thirty) days to respond to said motion. Consequently, on December 24, 2002 she came to this attorney's office. On December 26, 2002, this office contacted Your Honor Judge Bartle's chambers to request an extension of time to file a response. A review of the record by the Judge's clerk revealed that Judge Bartle had entered an Order dismissing the case on December 19, 2002.

As a pro se Plaintiff, the conflicting Orders and subsequent untimely filing of Defendant's Motion to Dismiss understandably confused Ms. Coker. She was also mistaken as to the time limits required for her response, believing it to be 30 days instead of the requisite 20. Conversely, Defendants, who are represented by seasoned U.S. Attorneys, were granted two extensions of time to file their response and yet still filed said response out of time pursuant to the Judge's Order. However, Defendant's untimely Motion was still permitted and subsequently granted by this Honorable Court. Consequently, the interests of justice require that Plaintiff's foregoing motion be granted. Accordingly, plaintiff respectfully requests that the Judges Order of 12/19/02 be vacated and that Plaintiff be allowed to file her response to Defendant's Motion to Dismiss out of time.

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court vacate the Order dated December 19, 2002 and grant her additional time under F.R.Civ.P. 6(b)(2) to file a response to Defendant's Motion to Dismiss.

Respectfully submitted,

DATED:

BY: _____
J. Edward McCain III, Esquire
1800 Callowhill Street
Philadelphia, PA 19130
215-557-0151
Attorney for Plaintiff

PROOF OF SERVICE

I, J. Edward McCain III, hereby certify that on this ____ day of December, 2002, I caused a true and correct copy of the foregoing **Motion to Vacate Order** to be served by United States first class mail, postage prepaid, upon the following:

Patrick L. Meehan
United States Attorney
C/O Linda Shafer Bocchino, AUSA
615 Chestnut Street, Suite 1250
Philadelphia, PA 19106-4476

J. Edward McCain III, Esquire
THE LAW OFFICES OF
J. EDWARD MCCAIN III
1800 Callowhill Street
Philadelphia, PA 19130

Attorney for Plaintiff